IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

LETTERS PATENT APPEAL NO.79 OF 2007

(Mrs.Alpana Mukherjee W/o Joy Mukherjee
V/s
Civil Station Education Society and two others)

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **J.P.DEVADHAR & B.P.DHARMADHIKARI, JJ.**
DATE : **04th July, 2007**

The matter is part heard. By impugned judgment dated 05/1/2007, the learned Presiding Officer, School Tribunal, Nagpur has after holding that the Departmental Enquiry conducted against present appellant is in breach of principals of natural justice, remanded the matter back to the employer management with a direction to conduct fresh enquiry by treating the appellant as under suspension. The said order and judgment of School Tribunal was challenged before the learned Single Judge in Writ Petition No. 480 of 2007 and the learned Single Judge has on 06/3/2007 dismissed the said writ petition after noticing that a reference to the Larger Bench about powers of School Tribunal in this respect was pending. The observation

has been made that the issue raised before learned Single Judge was not being considered by the Larger Bench. This order of learned Single Judge has been questioned in the present L.P.A. The Larger Bench has thereafter delivered its judgment on 10/4/2007.

Shri P.D.Meghe, learned counsel appearing for appellant employee contends that having held that the inquiry is unfair, there was no point in permitting very same management to hold fresh enquiry because the management is about to victimize the employee and the enquiry would also be conducted similarly and in any case the employee would be found guilty, though actually she is not guilty. He contends that in such circumstances, it would have been very appropriate if School Tribunal itself would have conducted the enquiry. He argues that the Hon'ble Full Bench in its judgment has not expressly overruled the Division Bench judgment, which held that in appropriate case the School Tribunal can itself record evidence in the matter of misconduct and find out whether the employee has been rightly punished or not. He lastly states that the management is not likely to pay the employee any subsistence allowance during the pendency of Departmental Enquiry.

Shri Gautam Chatterjee, learned counsel appearing for respondent management contends that issue referred to the Larger Bench is apparent from

para 13 of the judgment and the Larger Bench has considered the provisions of Maharashtra Employees of Private Schools Act, read with Order 41 Rule 27 of the Code of Civil Procedure because the School Tribunal is constituted as Appellate Authority by the M.E.P.S. Act. He contends that in view of said provision, the Full Bench has held that the School Tribunal in exceptional circumstances only can record additional evidence. He, therefore, argues that impliedly it means that there cannot be denovo trial or Departmental Enquiry before the School Tribunal.

With the assistance of both the learned counsels, we have perused the judgment of Hon'ble Full Bench. We find that though Hon'ble Full Bench has not expressly answered the issue referred to it, it is apparent that the Hon'ble Full Bench has found that the School Tribunal is a Appellate Authority and therefore, in the circumstances and contingencies demonstrated by Order 41 Rule 27 of the C.P.C. alone additional evidence can be led before it. In view of this finding which is given on question referred to it, it is apparent that the Hon'ble Full Bench has impliedly also held that there cannot be fresh inquiry or denovo inquiry before School Tribinal.

In the circumstances, we find that there is no scope for showing any indulgence in present L.P.A. However, it is made clear that the respondent

management shall complete enquiry as early as possible and in any case within a period of four months, prescribed under Rule 37 of the M.E.P.S. Rules 1981. It is also made clear that the management shall regularly pay subsistence allowance to the present appellant during the pendency of said enquiry before it from the date of judgment of School Tribunal.

With these observations, L.P.A. is dismissed. No order as to costs.

JUDGE **JUDGE**

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